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09/916,546	07/27/2001	John H. Schneider	769-283	8553
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DAY PITNEY LLP 7 TIMES SQUARE NEW YORK, NY 10036-7311			EXAMINER PICKETT, JOHN G	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JOHN H. SCHNEIDER

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Appeal 2007-4351  
Application 09/916,546  
Technology Center 3700

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Decided: March 26, 2008

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Before MURRIEL E. CRAWFORD, DAVID B. WALKER, and  
STEVEN D.A. McCARTHY, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134 (2002) from a final rejection of claims 1 to 4, 6 to 8, 10, 11, and 13 to 15. We have jurisdiction under 35 U.S.C. § 6(b)(2002).

Appellant invented a method for manufacturing a reclosable plastic bag (Specification 1).

Claim 1 under appeal reads as follows:

1. A method for producing a tamper-evident reclosable plastic bag comprising the steps of:

providing a zipper with first and second zipper profiles that include mating interlocking members, said first and second zipper profiles further including separate first and second flanges, respectively, said second flange being longer than said first flange and said second flange including a proximal portion and a distal portion with a tamper evident feature interposed between said proximal and distal portions, said proximal portion being more closely spaced to said second profile interlocking member than said distal portion, wherein a slider is positioned over said interlocking members;

positioning said zipper on a web of bag making film with said second interlocking zipper member atop said first interlocking zipper member with said first and second flanges extending in a longitudinally moving direction of said web thereby orienting said zipper in a direction transverse to a machine direction of said web to a form, fill and seal machine;

securing said second flange distal portion to said web spaced from said first flange in said longitudinally moving direction of said web; and

transporting said web in said longitudinally moving direction to said form fill and seal apparatus.

The Examiner rejected claims 1 to 4, 6, 8, 10, 11 and 13 to 15 under 35 U.S.C. § 103(a) as being unpatentable over Malin in view of May and Van Erden.

The Examiner rejected claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Malin in view of May, Van Erden and Boeckmann.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Boeckmann	US 5,023,122	Jun. 11, 1991
May	US 5,647,671	Jul. 15, 1997
Malin	US 6,115,892	Sep. 12, 2000
Van Erden	US 6,212,857 B1	Apr. 10, 2001

Appellant contends that one skilled in the art would not be motivated to modify the method disclosed in Malin so as to provide first and second zipper profiles which include first and second flanges respectively which are separate from one another because such a modification would alter the principle operation of the Malin method.

### ISSUES

The issue is whether the Appellant has shown that the Examiner erred in holding that it would have been obvious to provide modify the Malin method so as to provide first and second flanges that are not connected to one another.

### FINDINGS OF FACT

Malin discloses a method for producing a plastic bag comprising the step of providing a zipper 10 with first 16 and second 18 zipper profiles and first and second flanges 22 and 24 (Figure 4). Malin discloses that there was a problem with other prior art methods which have one of the flanges unconnected to the web i.e.: because the flange is not connected to the web, the flange tends to flare out as the film enters the FFS machine leading to

machine jams or other problems (col. 2, ll. 9 to 24). To avoid these problems, Malin seals the flanges together so that there is no danger of jamming or of the flanges becoming separate when the film enters the FFS machine (col. 3, ll. 9 to 20).

May discloses a method for producing a plastic bag comprising the step of providing a zipper with first 86 and second 88 zipper profiles (Figure 5). May discloses that the flange of the second zipper profile 88 is longer and separate from the flange of the first zipper profile 86. May discloses that the method disclosed has the advantage of facilitating control of the strength of the peelable seal 90.

#### ANALYSIS

We will not sustain the rejection of claims 1 to 4, 6, 8, 10, 11 and 13 to 15 under 35 U.S.C. § 103(a) as being unpatentable over Malin in view of May and Van Erden because, in our view, a person of ordinary skill in the art would have no reason to modify the Malin device so as to separate the flanges as is taught by May, because Malin specifically discloses that it is the provision of connected flanges that solves the problem that Malin seeks to solve. Specifically, Malin attaches the zipper profiles so that the flanges of the zipper profiles are connected to avoid creating jams in the FFS and to avoid having the flanges being caught in the FFS. As such, the separation of the flanges of Malin as taught by May would not improve the Malin method, and thus a person of ordinary skill would have no reason to make the modification advanced by the Examiner.

In view of the foregoing, we will not sustain this rejection.

We will likewise not sustain the Examiner's rejection of claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Malin in view of May, Van Erden and Boeckmann because this rejection relies on the combination of the teachings of Malin and May discussed above.

The Examiner's decision is reversed.

REVERSED

vsh

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